

Council members at odds on Entergy regulation - Times-Picayune, The (New Orleans, LA) - October 24, 2009 - page 01

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Every year the New Orleans City Council awards contracts worth millions of dollars to the lawyers, engineers and accountants who work with it in regulating Entergy New Orleans and Entergy Louisiana.

Some of the consultants have worked for the council for more than 20 years.

Their contracts, the largest doled out by the council, total more than \$6 million this year. The regulated companies reimburse the council for the consultants' bills, using money they get from customers.

Councilwoman Shelley Midura has been looking for a cheaper solution, but as this week's council meeting showed, some of her colleagues are resisting a change.

Cynthia Hedge-Morrell and Cynthia Willard-Lewis, for instance, say the consultants' work has saved customers billions of dollars on their electricity and gas bills and there is no reason to jettison them for the sake of saving a few million dollars. Being penny-wise, they argue, could be pound-foolish.

Midura says other consultants or even city employees perhaps could do the work just as well. If there is a cheaper way to achieve similar results, the council should take it, she says.

The argument is not new.

In 1993, the watchdog Alliance for Affordable Energy charged that the council's Utility Committee and its consultants had run up almost \$500,000 in unnecessary expenses, including first-class plane tickets, posh hotel rooms and lavish meals.

Then-Councilman Joseph Giarrusso defended the expenses, saying the consultants had delivered \$3.8 billion in savings to customers over 10 years by avoiding rate increases. The disputed \$500,000, Giarrusso said, was "a very small price to pay for a service rendered to the ratepayers of this city."

--- Seeking applicants ---

As it must do every five years, the council recently requested applications from firms interested in getting the utility contracts. Five firms already under contract replied. Only two others expressed interest, and neither appeared likely to unseat the incumbents.

When Midura this week proposed extending the solicitation by two weeks in hopes of getting more "robust competition," she ran into a buzz saw of opposition led by Willard-Lewis, who said the city's

request had been widely advertised and there was no reason to reopen it.

After extensive debate, Midura's request was approved 4-2, with Willard-Lewis and James Carter voting no. Hedge-Morrell was in Cuba with Mayor Ray Nagin, but she has voted with Willard-Lewis on all recent utility matters.

This week's dispute, though, was just the latest in a recent series of battles over how the city should regulate Entergy.

At Midura's urging, the council voted in December to support the idea of hiring experts to review the council's entire approach to regulation and recommend whether there might be a better way, such as having much of the work performed by council employees rather than outside lawyers and engineers who earn up to \$495 an hour.

In May, however, the council rejected Midura's recommendation to hire the Rand Corp. and the National Regulatory Research Institute to perform the review at a cost of \$130,000. Rand and NRRI had filed the only acceptable response to the city's request for proposals. Other council members complained about the cost of their proposal and the fact no one else had submitted a bid.

Midura's backup plan was to ask the city inspector general's office to perform the same sort of review. However, the office later said it couldn't undertake the review until at least 2010, leaving the council little choice for now but to continue relying on outside consultants.

The principal current consultants, with their maximum compensation for 2009, are the Washington law firm of Sonnenschein, Nath & Rosenthal LLP, \$3.3 million; the Legend Consulting Group of Denver, which handles engineering and technical matters, \$1.95 million; Wilkerson and Henry LLC, a local law firm, \$600,000; and the local accounting firms of Bruno & Tervalon LLP and Pailet, Meunier & LeBlanc LLP, \$250,000 each.

--- Contracts expiring ---

The council awards contracts to its consultants for one year, with the possibility of four one-year renewals. Because this is the fifth year of the latest cycle, the current contracts all expire Dec. 31 and cannot be renewed.

However, when Midura presented a draft of a solicitation for new consultants in August, the Utility Committee rejected it. Hedge-Morrell and Willard-Lewis complained they had not seen the document beforehand, and they and Midura traded charges about who was playing politics.

Unlike some council committees, where members almost invariably take their cues from the chairman, Midura has become a minority on her own committee, frequently clashing with Hedge-Morrell and Willard-Lewis. In this case, Carter, the final committee member, who has been less critical of Midura, sided with Hedge-Morrell and Willard-Lewis.

A few weeks later, the committee approved a revised solicitation with changes demanded by Hedge-Morrell and Willard-Lewis, including a requirement that applicants describe their "knowledge

and experience with Entergy New Orleans system agreement and disaster recovery matters" -- a provision that clearly favored the firms already working for the council.

That solicitation, issued Sept. 3, drew the small number of responses Midura cited this week.

When Midura ran for the council in 2006 against incumbent Jay Batt, she accused Batt of being in Entergy's pocket and promised to take a hard look at the utility advisers' contracts. After taking office, however, she became convinced the consultants were doing an outstanding job and were saving Entergy customers far more money than they were paid.

"I have the utmost confidence in their abilities," Midura said in March 2007 of Sullivan & Worcester, the Washington law firm that was then the council's lead adviser. The firm "did an amazing job on the settlement agreement this past year," she said, referring to a pact on post-Katrina rate increases.

The Washington lawyers who worked with the council, led by **Clint Vince**, later moved to the Sonnenschein firm -- at least the fourth firm Vince has been affiliated with since the council first hired him in 1983.

--- Unexpected ascension ---

In August 2007, Midura was unexpectedly thrust into the chairmanship of the Utility Committee when Councilman Oliver Thomas resigned from office. In her new role, she seemed to grow more skeptical about the size of the consultants' contracts.

In proposing the next year that an outside firm should review the council's regulatory procedures, she said such an action should counter any suspicions that the selection of consultants would be influenced by "subjective, political influence."

In April 2007, at Midura's urging, council members all agreed not to accept any more campaign contributions from either Entergy or any of the council's utility consultants, though the resolution was not legally binding. Some of the consultants had for years been large donors to council members' campaigns.

In February 2008, Arnie Fielkow, Hedge-Morrell and Willard-Lewis recused themselves from voting on the Paillet firm's contract because the firm had done work for them or their campaigns. They did not recuse themselves from voting for the same consultant's 2009 renewal, however.

In recent debates, Midura worsened her already bad relations with Hedge-Morrell and Willard-Lewis by pointing out the non-recusals. Although claiming she was "not questioning the integrity of my colleagues," Midura said that "mixing private and council contracts . . . allows a perception of predetermined outcome based on personal preferences."

--- Liable or not? ---

This week, Midura accused Willard-Lewis of "intellectual dishonesty" in arguing that the council should be satisfied with the small number of responses to its latest solicitation when a few months

earlier Willard-Lewis had said the lack of multiple responses was a reason to reject the Rand-NRRI bid to study the council's regulatory procedures.

Willard-Lewis said there was no reason to think that reopening the latest solicitation would produce more responses, and she and Carter complained that Midura had not taken her proposal to the Utility Committee -- where it likely would have died.

Carter also said he feared that reopening the request could expose the city to legal liability because the initial responses are now public documents and later applicants could examine them.

Deputy City Attorney Fred Wild said he saw no such danger because the solicitation never guaranteed confidentiality. "There is no basis on which a proposer can claim his or her rights have been violated," he said. Carter, also a lawyer, said he disagreed.

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